CURRENT LEGISLATION.

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THE TORRENS SYSTEM OF LAND TITLE REGISTRATION.—Conveyancing in England was originally by physical transfer of all the title-deeds, including one from the seller to the purchaser; a crude method, but with the advantages of being cheap, safe and secret.[1] In the United States, however, it was early replaced by the recording system, under which title papers are transcribed at length on the public records of the county in which the land lies, and thereupon become constructive notice of the claims which they represent to all who deal with the property.[2] To-day a new method—that of land title registration, which bears the name of its inventor, Sir Robert Richard Torrens, once premier and registrar-general of South Australia—bids fair to replace the recording system, and has already been recognized by law in fourteen American states,[3] Hawaii[4] and the Philippines,[5] besides being in almost universal operation in the British colonies.[6]

The disadvantages of the recording system lie in the fearfully complicated state of the record title of land which is frequently conveyed or encumbered, and the constant liability of the owner to suits on both recorded and unrecorded claims.[7] The purchaser of realty,

[1]Niblack, Analysis of the Torrens System, § 2; Torrens, Essay on the Transfer of Land by Registration, 9-10.

[2]See 8 Columbia Law Rev., 441-443; Niblack, *op. cit.* § 3.

[3]Deering's Gen. Laws Cal. 1915, Act 1049; Mills Ann. Stat. Colo. 1912, §§ 856-957; Hurd's Rev. Stat. Ill. 1915-1916, pp. 608-626; Mass. Rev. Laws 1902, pp. 1228-1258, 1770, as amended by Supplement 1902-1908, pp. 1250-1257, 1399, and also Acts 1910, c. 245, 560, Acts 1911, c. 433, Acts 1915, c. 290; Gen. Stat. Minn. 1913, §§ 6868-6950, as amended by Sess. Laws 1915, c. 242; Laws Miss. 1914, c. 131; Neb. Laws 1915, c. 225; N. Y. Consol. Laws 1909, §§ 370-435 of Real Prop. Law, as amended by Laws 1910, c. 627, Laws 1916, c. 547; Pub. Laws No. Car. 1913, c. 90, as amended by Pub. Laws 1915, c. 128, 245; Page & Adams Ann. Ohio Gen. Code, Supplement 1916, §§ 8572-1 to 8572-118; Lord's Ore. Laws 1909, §§ 7179-7285, as amended by Gen. Laws 1911, c. 276, Gen. Laws 1913, c. 60; Laws So. Car. 1916, No. 550; Va. Acts 1916, c. 62; Remington & Ballinger's Ann. Wash. Codes 1910, §§ 8806-8905.

[4]Rev. Laws Hawaii 1915, §§ 3133-3242.

[5]Compilation Laws Philippine Islands 1908, pp. 777-820, as amended by Code Civ. Proc. 1914, pp. 368-372.

[6]South Australia (1858), Queensland (1861), Victoria (1862), New South Wales (1862), Tasmania (1862), New Zealand (1870), British Columbia (1870), West Australia (1874), Fiji (1876), Bengal (1876), Ontario (1885), Manitoba (1885), Canadian Territories (1886), British New Guinea (1889), Nova Scotia (1904), Falkland Islands (1904), Alberta (1906), Uganda Protectorate (1908), Saskatchewan (1909), Transvaal (1909), etc., etc. See Hunter, Torrens Title Cases, pp. xxv-xxxiii; Thom, Canadian Torrens System, pp. 9-10, 24-29; also statutory compilations. In England itself, after the failure of compromise legislation, a reasonably adequate Torrens law was adopted in 1897. 60 & 61 Vict., c. 65. Various kinds of land title registration, long antedating the Torrens system and more or less closely resembling it, are in force in some German and other Continental jurisdictions. Torrens, *op. cit.* 9.

[7]Cameron, The Torrens System, 58-60.

to obtain even reasonable protection, must procure the services of a searcher to prepare an abstract of all the deeds, mortgages, *lis pendens*, and other documents affecting the property recorded in the county court-house for years back; and he must also procure an attorney's opinion on the validity of those instruments as affecting the legal status of the title; or he may accept the doubtful security of a warranty deed.[8] Even the utmost precautions cannot assure him an indefeasible title; unsuspected claims, such as the dower right of unknown widows, may arise to cast a cloud upon it.[9]

The Torrens system of land title registration wholly does away with the accumulation of hoary documents, and provides for the dedication of one folium of the register to each particular title, on which only memoranda of valid and existing liens and claims are kept recorded.[10] It has been defined as a system of registering land which registers title instead of instruments as evidences of title.[11] When a mortgage debt is paid, the memorial of it is wholly cancelled; when the land is conveyed to a new owner, a fresh certificate is issued, and in every case the person entitled receives a duplicate of the recorded certificate. When the original registration under a Torrens law is accomplished, notice is given by service and publication to all whom it may concern, and claims not proved within a stated period are barred as by the running of a short statute of limitations. Under the typical Torrens law, to be sure, the state voluntarily maintains an assurance or indemnity fund, supported by fees on registration, to reimburse those whose claims were cut off by error, omission, maladministration on the part of the registrar, etc.; but the registered holder takes free from all such claims, his title being guaranteed indefeasible by the sovereignty which is the source of all titles.[12]

The introduction of the Torrens system into the United States has been vigorously opposed by title insurance companies, professional searchers, and others who profit by the confusion and uncertainty inseparable from the old methods.[13] At first, the efforts of these interests were crowned with success, the first two Torrens laws—the Illinois act of 1895 and the Ohio act of 1896—having been held unconstitutional;[14] but later enactments, adapted to the peculiar re-

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[8]See "The Torrens Land Transfer Act of Nebraska", Nebraska History and Political Science Series, Bulletin No. 10, pp. 21-22; Hopper, Sketch of the Torrens System of Land Title Registration (2d ed., 1916), 13-14.

[9]See 8 Columbia Law Rev. 442.

[10]Torrens, *op. cit.* 22; Hopper, *op. cit.* 14.

[11]Cameron, *op. cit.* 11.

[12]Torrens, *op. cit.* 18 *et seq.*

[13]Cameron, *op. cit.* 64-65, 102, 106; Hopper, *op. cit.* 18.

[14]The Illinois law was held invalid on the ground that it conferred judicial powers on the recorder. People *v.* Chase (1896) 165 Ill. 527, 46 N. E. 454. The opinion appears to confuse ministerial and judicial acts; for under the law in question the court had jurisdiction of all controversies, the recorder's power to register automatically being limited to claims not challenged within the time limited. But later statutes have avoided the difficulty by requiring that proceedings for *initial* registration must be conducted by the court, though subsequent proceedings may be carried on by the registrar. The Ohio law was said to take private property without due process of law, notice to adverse claimants not being subject to judicial scrutiny. State *v.* Guilbert (1897) 56 Ohio St. 575, 47 N. E. 551.

quirements of our constitutional system, and containing all the essential elements of true Torrens laws, have repeatedly withstood attack.[15] To-day the principle of land title registration is firmly entrenched, and has found such favor with the best element of the legal profession that the American Bar Association has not only put itself on record as favoring the idea, but through a special Torrens committee has submitted a model act, prepared by the Commissioners on Uniform State Laws, which it recommends for general adoption.[16]

American Torrens laws have many features in common. Under all of them, registration of title is optional in the first instance;[17] but, except in Oregon and Nebraska, subsequent withdrawal of the land from registration is not permitted.[18] The provisions for notice to claimants are substantially similar, consisting, generally, of personal service where parties can be found in the state by reasonable diligence, mailing to last-known place of residence, and in all cases publication in a newspaper of sufficient local circulation for a period varying in different states;[19] though in Massachusetts, Hawaii, and the Philippines, publication, mailing, and posting notice of application in a conspicuous place on the land itself, are sufficient without even attempting personal service—the court, however, requiring proof of actual notice in proper instances.[20] A decree entered by the court is made binding on all the world, and the registered owner holds free from all claims not noted on his certificate of title except (1) liens and claims arising under United States laws, which the state cannot require to be registered; (2) short-term leases; (3) taxes or special assessments not had at the date of the certificate; (4) public highway land duly dedicated; (5) rights of action allowed by the act; and, in some cases, existing easements and a few other classes of claims.[21] A decree once entered can be opened only within a short fixed period,

[15]The provisions of the Massachusetts act, under which notice to claimants was by publication, posting on the land, and registered mail where address known, *held* not to violate due process clause. Tyler *v.* The Judges (1900) 175 Mass. 71, 55 N. E. 812. A similar advanced view has been taken by the United States Supreme Court in a case not involving a Torrens law. American Land Co. *v.* Zeiss (1911) 219 U. S. 47, 31 Sup. Ct. 200. The California act is constitutional. Robinson *v.* Kerrigan (1907) 151 Cal. 40, 90 Pac. 129. For other cases upholding constitutionality of Torrens acts, see State *v.* Westfall (1902) 85 Minn. 437, 89 N. W. 175; People *v.* Crissman (1907) 41 Colo. 450, 92 Pac. 949; People *v.* Simon (1898) 176 Ill. 165, 52 N. E. 910.

[16]Amer. Bar Assn., Reports, vol. XXXVIII, 1055-1066, vol. XL, 929-934. For text of Model Act prepared by Commissioners on Uniform State Laws, see U. S. Senate, 64th Cong., 1st Sess., Document No. 351.

[17]A possible exception is in Illinois, where counties may adopt an act making it the duty of executors and administrators to register land in their care. Hurd's Rev. Stat. Ill. 1915-1916, pp. 626-627. But an election in which the voters of Cook County adopted the act was declared invalid. Harvey *v.* County of Cook (1906) 221 Ill. 76, 77 N. E. 424.

[18]See Gen Laws Ore. 1911, c. 276, and Neb. act, § 104, permitting withdrawal. Typical provisions forbidding it are: Cal. act, § 44; Ill. act, § 89.

[19]See, e. g., Colo. act, §§ 876-877; Miss. act, §§ 6-7.

[20]Mass. act, §§ 29-31; Hawaiian act, §§ 3161-3163; Philippine act, §§ 30-32. These provisions are "clearly within the well-established principles governing bills to quiet title". Niblack, *op. cit.* § 35.

[21]See, *e. g.*, Cal. act, § 34; Minn. act, § 6892.

after which it becomes absolute.[22] For the administration of the acts, existing judicial machinery has generally been utilized, though Massachusetts has for nearly twenty years maintained a special land court.[23]

With regard to the assurance fund provisions, however, there is considerable divergence among the American acts. The ideal situation is to have the state, which guarantees the title and cuts off claims by constructive notice and an arbitrary period of limitation, also stand ready absolutely to indemnify claimants injured by mistakes of its officers. But only about half the states in which Torrens acts are in force have adopted this principle;[24] in the others, as well as under the Model Act, neither state nor county stand back of the assurance fund, and if the amount accumulated proves insufficient to satisfy judgments, the claimant must be content with collecting principal and interest from moneys subsequently accruing to the fund.[25]

Torrens titles, owing to their security and consequent ready marketability, are becoming increasingly popular; and it seems only a question of time before registration of title will not only be encouraged by law in all American jurisdictions, but will become so nearly universal that the total abolition of the cumbersome recording system will be seriously contemplated. It must be admitted, however, that the greater initial cost of Torrens registration constitutes a serious barrier to its voluntary adoption which even the tremendously greater cheapness and facility of subsequent transactions do not wholly remove;[26] and on the remedying of this and other defects in the administrative provisions of existing laws the friends of the system would do well to concentrate their efforts.[27]

GOVERNMENT REGULATION OF PRIVATE SHIPPING.—The recent Shipping Board Act,[1] besides providing for a merchant marine owned or controlled by the government, attempts for the first time the regulation of private shipping in respect to rates and practices. This feature of the Act has attracted comparatively little attention considering the important results which it seeks to accomplish. Previous to this

[22]See *e. g.*, Colo. act, § 886; Hawaiian act § 3170; Ill. act, § 69; Minn. act, § 6893; Neb. act, § 26; Wash. act, § 8836.

[23]Mass. act, § 1 *et seq.*, and amendments. Similar provisions are found in Hawaii and the Philippines. Hawaiian act, § 3133 *et seq.*; Philippine act, § 1 *et seq.* Sir Robert Torrens considered the expense of a special court unnecessary, and advocated reference of registration questions to the regular tribunals. Torrens, *op. cit.* 20. Unless the special court can also be local, the delay, expense, and inconvenience render it undesirable. Niblack, *op. cit.* § 29.

[24]See, *e. g.*, Mass. act, § 98; No. Car. act, § 36; So. Car. act, § 36.

[25]See, *e. g.*, Minn. act, § 6944; Ohio act, § 8572-107; Va. act, § 87; model act, § 87.

[26]Nebraska pamphlet (see foot-note 8), pp. 39-48.

[27]Pending New York amendments seek (1) to simplify court procedure, shortening the time and reducing the initial cost; (2) make searching and examination of titles exclusively official; (3) place the state or county back of the assurance fund. Hopper, *op. cit.* 59.

[1]Pub. Laws, 64th Congr., 1st Sess., c. 451, p. 728.